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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. MIYATA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

19- 1- 1585- 10 09th Div.

ASHLEY WELLMAN,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC. a.k.a. KAISER PERMANENTE, JOHN
AND MARY DOES 1-10, DOE
CORPORATIONS, PARTNERSHIPS or
OTHER ENTITIES 1-10,

Defendant.

) CIVIL NO.: _____

) (Medical Malpractice)

) **COMPLAINT; SUMMONS**

COMPLAINT

Plaintiff ASHLEY WELLMAN, by and through her above named attorney, for a
Complaint against the Defendant, alleges and avers as follows:

I. Parties.

1. At all times mentioned herein, Plaintiff ASHLEY WELLMAN, (hereinafter referred to as or "Plaintiff" or "ASHLEY"), resided in the County of Maui, State of Hawai'i.

2. At all times mentioned herein, Defendant KAISER FOUNDATION HEALTH PLAN, INC. a.k.a. KAISER PERMANENTE (hereinafter referred to as "KAISER" or "Defendant")

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was a foreign nonprofit corporation that established and maintained comprehensive, pre-paid direct service health care plans in the County of Honolulu, State of Hawai'i.

3. That Defendants JOHN AND MARY DOES 1-10 and DOE CORPORATIONS, PARTNERSHIPS or OTHER ENTITIES 1-10 (hereinafter collectively "Doe Defendants") are other persons or entities which owned, possessed, controlled or in some manner were responsible or liable for the events and incident described herein, that caused Plaintiff's injuries. Doe Defendants are named herein as parties pursuant to Rule 17(d) of the Hawai'i Rules of Civil Procedure.

II. Statement of Facts.

4. On or around October 5, 2016, October 6, 2016, and October 7, 2016, Plaintiff ASHLEY sought medical and/or psychiatric treatment at the KAISER facility in Wailuku, Maui.

5. On October 7, 2016 at approximately 4:00 p.m., Defendant KAISER negligently provided psychological and/or medical treatment to Plaintiff ASHLEY at the KAISER facility located in Wailuku, Maui.

6. The purpose of Plaintiff's visit to KAISER on October 7, 2016 was for depression.

7. On October 7, 2016, Plaintiff ASHLEY presented to KAISER with psychological complaints, including but not limited to severe depression, escalating suicidal ideations, a history of more than one (1) prior suicide attempts, increasing anxiety, post-traumatic stress disorder, panic attacks, dissociative episodes, poor concentration, decreased appetite, flashbacks of trauma, recurring nightmares, memory problems, severe headaches, inability to discern if memories were accurate, stress, prior domestic abuse, prior psychological abuse, insomnia, reports

of 'cycling', reports of grandiosity, reports of a 'flight of ideas', low energy, anhedonia, a family history of schizophrenia, family history of suicide, illegal drug use, limited long-term memory, hearing voices, concern she may have schizophrenia, limitations on judgment, reports that Plaintiff was formerly hospitalized for psychiatric illness, and reports by both Plaintiff and Plaintiff's friend that Plaintiff was not safe.

8. It was determined that on October 7, 2016, Plaintiff suffered from a psychiatric disorder or other disease which substantially impaired Plaintiff's mental health and necessitated treatment and/or supervision.

9. Without intervention on October 7, 2016, Plaintiff likely would have become dangerous to herself or dangerous to others within the next forty-five days.

10. On October 7, 2016, it was determined by Defendant KAISER that Plaintiff ASHLEY was in need of care and/or treatment and met the criteria for involuntary hospitalization pursuant to HRS § 334-60.2.

11. Plaintiff ASHLEY was receptive to hospitalization at Maui Medical Center inasmuch as Plaintiff recognized that she was "getting too suicidal." Plaintiff acknowledged to Defendant KAISER's agent that she needed inpatient care and was agreeable to voluntary inpatient treatment at Maui Medical Center and/or a psychiatric facility.

12. On October 7, 2016, Defendant KAISER's Agent, advised Plaintiff ASHLEY to go to Maui Medical Center, and directed Plaintiff to call KAISER after her discharge from Maui Medical Center to schedule a follow up appointment.

13. Plaintiff ASHLEY did not go to Maui Medical Center or a psychiatric facility after leaving KAISER on October 7, 2016.

14. There was no follow up by KAISER to confirm whether Plaintiff went to Maui Medical Center or follow up with Plaintiff's safety or wellbeing.

15. On October 8, 2016, at approximately 10:26 a.m., Plaintiff ASHLEY, while suffering from her untreated mental illness, drove a vehicle through a red traffic light and collided with a vehicle occupied by two individuals, resulting in their deaths.

16. Plaintiff ASHLEY was taken to Maui Medical Center as a result of this collision.

17. On October 8, 2016, following the collision, Plaintiff was placed on a psychiatric hold due to her suicidal intentions.

18. As a result of the collision on October 8, 2016, an Indictment was filed by the State of Hawai'i against Plaintiff charging her with one count of Murder in the First Degree and two counts of Murder in the Second Degree in State of Hawai'i v. Ashley Wellman, Criminal No.: 2CPC-17-0000909.

19. On August 7, 2018, Plaintiff was acquitted of the above-mentioned criminal charges due to Plaintiff being found to have suffered from a mental disease or disorder on October 8, 2016, the date of the collision.

20. Plaintiff filed an Inquiry with the Medical Inquiry and Conciliation Panel, Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii and received a notice of termination from MICP authorizing the filing of this lawsuit.

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III. Allegations.

21. That Defendant KAISER had a "special relationship" with Plaintiff ASHLEY.

22. That based upon Plaintiff's psychiatric condition on October 7, 2016, the threat Plaintiff ASHLEY posed to herself and to others was foreseeable and it was not safe for Plaintiff to operate a motor vehicle.

23. Prior to the collision on October 8, 2016, KAISER failed to instruct Plaintiff of her inability to safely operate a motor vehicle given her medical and/or psychiatric condition.

24. KAISER knew or should have known that Plaintiff was likely to cause bodily harm to herself and/or to others if not controlled.

25. Defendant KAISER had a duty to exercise reasonable care to control Plaintiff to prevent her from doing foreseeable harm to herself and/or to others.

26. October 7, 2016, KAISER had the ability to control Plaintiff ASHLEY and had *de facto* and/or *de jure* custody or control over Plaintiff.

IV. Causes of Action.

27. Defendant had a duty to exercise ordinary care and/or the requisite standard of care of a medical and/or psychiatric health care provider to Plaintiff.

28. Defendant KAISER breached their foregoing duty and failed to use that requisite standard of care to avoid foreseeable injury. Defendant failed to carry out their prescribed duties and/or failed to exercise due care in the performance of their duties.

29. Plaintiff's injuries were the reasonably foreseeable outcome of Defendant's acts and/or omissions.

30. Under the doctrine *respondeat superior*, Defendant was each vicariously liable for the acts of its agents, employees, and/or representatives, committed in the scope and course of the employment and/or agency.

31. Under the doctrine of Aided-in-Agency, Defendant KAISER was each responsible for the acts of its agents, employees, and/or representatives.

32. Defendant breached its duty of care by:

a. Failing to supervise, oversee, monitor and/or exercise control over all persons that provided medical and/or psychiatric treatment to Plaintiff ASHLEY prior to the collision;

b. Failing to enforce adequate policies and procedures to protect foreseeable injury to others, caused by psychiatric patients, including Plaintiff ASHLEY.

c. Failing to determine, monitor and evaluate the selection criteria by which patients at KAISER were to be recommended for voluntary admission for nonemergency treatment or supervision and/or involuntary hospitalization;

d. Failing to properly diagnose and/or provide medical and/or psychiatric treatment to Plaintiff ASHLEY;

e. Failing to properly provide a transition of care to Plaintiff ASHLEY;

f. Failing to warn Plaintiff and/or the October 7, 2016 companion of Plaintiff ASHLEY of the unreasonable risk of harm posed by Plaintiff and/or dangerous condition that existed due to Plaintiff's medical and/or psychiatric condition;

g. Failing to warn Plaintiff of the risk of operating a motor vehicle while under the influence of the medication;

h. Failing to warn Plaintiff of the risk of operating a motor vehicle due to her medical, and/or psychiatric conditions;

i. Failing to warn or take any action to protect against unreasonable risk of harm others foreseeably endangered by the conduct of Plaintiff;

j. Failing to disclose the contents of a confidential communication, including but not limited to failing to notify and/or request assistance from an available suicide/crisis intervention team, first responders, paramedics, and/or the Maui Police Department;

k. Failing to protect Plaintiff ASHLEY from the risk she posed to herself and to others given her medical and/or psychiatric conditions;

l. Improperly discharging Plaintiff from Defendant's care;

m. Failing to properly prescribe medication to Plaintiff to treat her medical and/or psychiatric conditions; and,

n. Failing to properly confine or restrict Plaintiff ASHLEY to protect Plaintiff from harming herself and/or others.

33. The conduct of Defendant and those acting on its behalf, including the medical treatment, psychological treatment, and/or lack thereof, in connection with the foregoing, was negligent and grossly negligent.

34. Defendant KAISER had a duty to properly hire, train, supervise, select and/or retain employees, agents and/or representatives to provide medical and/or psychological care that meets the standard of care of a health care provider in the State of Hawai'i. Defendant KAISER breached this duty by negligently and/or grossly negligently hiring, training, supervising, selecting and/or retaining persons who acted with deliberate indifference and/or negligence and/or gross

negligence, resulting in Plaintiff's damages.

35. Defendant's actions caused Plaintiff to suffer severe emotional, psychological and physical damages from the above intentional actions causing intentional and negligent infliction of emotional distress.

36. Defendant knew, or should have known, that Defendant's actions or inaction would cause Plaintiff severe emotional distress.

37. Defendant breached its contract with Plaintiff to provide professional services that would not cause harm to Plaintiff, when in fact, Defendant's actions caused substantial harm to Plaintiff.

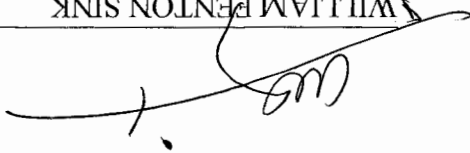
38. That as a direct and legal cause of Defendant's intentional actions, Plaintiff has suffered, special, general and punitive damages.

V. Prayer.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. General damages for emotional, psychological and physical injuries according to proof;
2. Special damages for economic losses and expenses according to proof;
3. Punitive damages according to proof;
4. For pre-judgment interest, Plaintiff's cost of suit, and attorney's fees; and
5. For such other relief as the court deems just and proper, including binding arbitration.

WILLIAM PENTON SINK
Attorney for Plaintiff



OCT 08 2019

Dated: Honolulu, Hawaii,